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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/713,292

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R. Bruce Wallace

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02/03/2005

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EXAMINER

BRUCKART, BENJAMIN R

ART UNIT

PAPER NUMBER

2155

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/713,292

Applicant(s)

WALLACE ET AL.

Examiner

Benjamin R Bruckart

Art Unit

2155

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-44.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Continuation of 13. Other: Applicant argues:

- 1) Hu fails to teach what part of the system actually receives a redirected customer web site access request from a network server.
- 2) Hu fails to teach generating a request for a capacity determination for the web site.
- 3) Hu fails to determine if the web site has capacity to handle an additional customer.
- 4) Hu fails to teach redirect the customer to the website if sufficient capacity is found.
- 5) Ellis fails to notify the customer if the web site currently has insufficient capacity
- 6) Ellis does not teach a customer identification unit
- 7) Chang fails to teach scheduling access for a customer to a website.
- 8) There is no combination to combine.

In response, the examiner respectfully submits:

- 1) The Hu reference does teach:

a redirect receiving unit for receiving a redirected customer web site access request from a network server (Hu: col. 6, lines 10-22; from server module).

Col. 6, lines 10-22 shows a client request received and the network request manager responding with information (redirection information) to directly contact the content server. Col. 4, lines 4-12, in the overview shows the clients requests are connected to websites with the selected content servers.

- 2) and 3) The Hu reference does teach:

a capacity determination unit for determining if the web site has capacity to handle an additional customer (Hu: col. 9, lines 7-46; policy module).

Applicant acknowledges understanding the policy manager retrieves a dynamic metric. The dynamic metric measures a time-varying characteristic associated with each content server with regards to processing capacity. The policy manager's request is fulfilled as the metric is recalculated over time. Col. 10, lines 2-7 shows the metric is made and used in conjunction with the request from the client. Retrieving and requesting are used in the same light as for the purpose collecting data.

Applicant argues "the present invention does not allow a customer-specified web site to be accessed if the customer-specified web site does not have capacity to handle an additional customer."

Col. 10, lines 19-38 teach the requests are directed to servers who are best able to handle the request based on capacity. The Hu reference even illustrates an example in which the dynamic metric for a content server has decreased from 0.4 to 0.1 possibly because of taxing client requests. As a result the invention adjusts the distribution of requests to even the burden across all of the content servers.

- 4) The Hu reference does teach:

a redirect unit for redirecting the customer to the web site if sufficient capacity is found (Hu: col. 11, lines 17-27).

Again, col. 10, lines 19-38 teach the requests are directed to servers who are best able to handle the request based on capacity. The Hu reference illustrates the invention adjusts the distribution of requests to even the burden across all of the content servers. So that servers with the best capacity to handle requests receive them.

- 5) The Ellis reference does teaches:

a notification unit for notifying the user if the site currently has insufficient capacity (Ellis: col. 7, lines 17-44; if the main server cant pass off the connection or handle the connection itself).

Applicant argues Ellis does not teach a web site or customer. The Hu reference teaches both the customer as a client and the content servers as the websites. The Ellis reference is only relied upon for notification if insufficient capacity is found.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

- 6) and 7) Applicant argues Ellis does not teach a customer identification unit for determining whether a customer has scheduled access to a web site as claimed in claim 3 and Chang does not teach scheduling access for a customer to a website.

The examiner cannot find any indication of asserting Ellis to teaching the customer identification unit. The examiner utilizes the Chang reference as cited in the Final office action.

The Chang reference teaches:

a customer identification unit for determining whether a customer has scheduled access to a web sited (Chang: col. 6, lines 3-36; user id and password for scheduled access of protected pages).

a scheduling processor for scheduling access of the customer to the web site (Chang: col. 3, lines 27-31).

- 8) Applicant argues there is no reason, suggestion, or motivation to combine the references.

Regarding claim 1,

The Hu reference teaches an internet customer access system (Hu: col. 2, lines 27-40; clients access content servers through the invention) comprising:

a redirect receiving unit for receiving a redirected customer web site access request from a network server (Hu: col. 6, lines 10-22; from server module) and generating a request for a capacity

a capacity determination unit for determining if the web site has capacity to handle an additional customer (Hu: col. 9, lines 7-46; policy module);

a redirect unit for redirecting the customer to the web site if sufficient capacity is found (Hu: col. 11, lines 17-27).

The Hu reference does not explicitly state notifying the customer of insufficient capacity but does show notifying itself if a server to be directed to becomes unavailable.

The Ellis reference teaches a notification unit for notifying the user if the site currently has insufficient capacity (Ellis: col. 7, lines 17-44; if the main server can't pass off the connection or handle the connection itself); and

The Ellis reference further teaches the invention combines the processing power of all computers connected to enable bandwidth to be infinitely scaleable and to reduce latency substantially to zero (Ellis: col. 4, lines 46-55).

Therefore it would have been obvious at the time of the invention to one of ordinary skill in the art to create the internet customer access system as taught by Hu while employing notifying the customer in a distributed network of hosts as taught by Ellis in order to combine the processing power of all computers connected to enable bandwidth to be infinitely scaleable and to reduce latency substantially to zero (Ellis: col. 4, lines 46-55).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious at the time of the invention to one of ordinary skill in the art to create the internet customer access system as taught by Hu while employing notifying the customer in a distributed network of hosts as taught by Ellis in order to combine the processing power of all computers connected to enable bandwidth to be infinitely scaleable and to reduce latency substantially to zero (Ellis: col. 4, lines 46-55).



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